Council in respect of the bank's application. Under the third requirement, namely, that the circumstances in which gratification was solicited give rise to the inference that it was solicited corruptly, he, on the question of what is corrupt, said:

> 'corrupt' means 'doing an act knowing that the act done is wrong, doing so with evil feelings and evil intentions' (see *Kheng Kooi* v *R*[2]); 'purposely doing an act which the law forbids' (see *R* v *Smith*[3]). 'Corrupt' is a question of intention. If the circumstances show that what a person has done or has omitted to do was moved by an evil intention or a guilty mind, then he is liable under the section. Thus if the accused used his position to solicit gratification with a guilty mind, he is caught within the ambit of the section. The real point is whether there is soliciting a political donation with a corrupt intention.

In our case the fact that the appellant, in breach of his instructions by his employer, the Housing and Development Board, failed to report to the architect on the site that the subcontractor was his brother-in-law is a relevant consideration in the determination of corrupt intention. I find myself in agreement with what the learned trial judge has said in regard to the guilt and conviction of the appellant; the appeal in this regard is therefore dismissed.

This is an appeal both on conviction and the penalty imposed on the appellant under s 13(1) of the Act. On the matter of the penalty I am at variance with the learned trial judge's views on the said section. In my view the section unequivocally and clearly concerns itself only with the situation 'where a court convicts any person of an offence committed by the acceptance of any gratification in contravention of any provision of this Act'. Here the appellant was convicted of obtaining a gratification for Star-Tile General Contractor. It is not in dispute that the appellant personally did not receive the said sum of $226,027.41 or any part of it. This section in my view was intended to prevent corrupt wrong-doers from keeping or benefitting from the spoils of their crimes. I cannot imagine that the legislature ever intended that in similar circumstances such as these, a convicted accused had to be called upon to pay a penalty in respect of a sum which he himself clearly did not receive, accept or obtain for himself. The trial judge's order in respect of the penalty is set aside and the appeal on the penalty imposed is allowed.

Order accordingly.

Solicitors: *Lim, Ganesh & Liu.*

Reported by *Terence Tan Bian Chye*

Chua Chwee Thiam v Annie Lim

HIGH COURT (SINGAPORE) – DIVORCE NO 139 OF 1981
CHAN SEK KEONG J
13 APRIL 1989

Family Law – Divorce – Agreement setting out financial arrangements in divorce proceedings – Application to court to vary agreement – Whether sufficient material to show adverse change in financial circumstances – Suspension of agreement

The petitioner and the respondent had made an agreement ('the agreement') dated 20 March 1982 setting out the financial arrangements between them in the divorce proceedings. On 4 June 1987, the petitioner made an application to revoke the agreement. Under cl 1 of the agreement, the petitioner agreed to (and did) pay a capital sum of $150,000 in instalments to the respondent and their daughter. Under cl 2 of the agreement, the petitioner agreed to pay the respondent until she remarries, and their daughter until she marries, monthly sums of $3,500 and $1,500 respectively, tax free, as well as other sums in respect of medical expenses, food, monthly instalments for a car, life insurance policy premiums, and the respondent's legal fees in connection with the divorce proceedings. Under cl 5 of the agreement, the respondent agreed to support their daughter and to educate her. The petitioner's application was based on the ground that he was 'financially stretched'. He alleged that at the time he signed the agreement, his business was doing well but, at present, his company was in dire financial straits. The petitioner's affidavit itemized his total indebtedness. He also produced evidence that his three credit cards were cancelled and that he was unable to pay his tax arrears. His company was placed in receivership.

Held, allowing the application:

(1) The petitioner has produced enough evidence to show that there has been a material adverse change in his financial circumstance at the date of his petition.

(2) On the other hand, the respondent is well-off. In addition to the 60% of the lump sum of $150,000 received by her, she owns property at Grange Heights and Holland Road. She drives a Mercedes Benz and has also retained $8,000 from the sale of a BMW which she had been using earlier.

(3) Clause 2 of the agreement should be suspended with effect from June 1987 except for cl 2(d) which is to be varied by reducing the maintenance therein to $500 pm. Each party was to pay his or her own costs. Liberty to apply was also given.

KY Choy for the petitioner.
Lee Han Tiong for the respondent.

Cur Adv Vult

Chan Sek Keong J: This is an application made on 4 June 1987 by the petitioner to revoke an agreement dated 20 March 1982 ('the agreement') entered into between the petitioner and the respondent setting out the financial arrangements between them in the divorce proceedings. Under cl 1 of the agreement, the petitioner agreed to (and did) pay a capital sum of $150,000 in instalments to the respondent (60%) and their daughter (40%) who was born on 28 December 1965. Under cl 2 of the agreement, the petitioner agreed to pay the respondent until she remarries, and the daughter until she marries, the following:

(a) the monthly sum of $3,500 and $1,500 respectively, tax free;
(b) all medical and dental expenses, including costs of hospitalization;
(c) all monthly outgoings in respect of the respondent's flat known as No 19E Grange Heights, Singapore;
(d) all food and other household provisions not exceeding $1,000 pm;
(e) all monthly instalments payable in respect of a car ER 8790X and the costs of maintaining it, including the cost of employing a driver 'provided that when the car is sold by the husband to purchase another in substitution, the proceeds of the sale shall belong to the husband and that the car to be so purchased in substitution shall be of comparative standard';
(f) all premiums payable in respect of two policies of life insurance Nos 6222207 and 497954;
(g) the school/college expenses of the daughter and if she shows a potentiality for university education to support and maintain her in respect thereof;
(h) the policy of life insurance No 225976 to be assigned to the wife and daughter;
(i) the respondent's legal fees in connection with the divorce proceedings agreed at $5,000.

Under cl 5 of the agreement, the respondent agreed to support, maintain and educate the daughter according to her status in life and also to pay for her university education.

The petitioner's application is based on the ground that he was 'financially stretched'. He has alleged that at the time he signed the agreement, his business was doing well but since then had suffered setbacks and that his company Rimaco (Pte) Ltd was in dire financial straits. The financial position of the petitioner at the date of hearing of this application, on the basis of his affidavits, may be summarized as follows:

(1) $857,690.70 due to Citibank as at 24 May 1987 secured by a mortgage on No 2 Saraca Hill, Singapore;
(2) $642,023.85 due to Deutsche Bank; $160,000 due to the developer in respect of No 10-06, Faber Garden, Singapore;
(3) $190,000 due to CPF and $305,000 due to Citibank, secured by mortgages on No 11 Chestnut Crescent, Singapore;
(4) $49,887.87 due from Rimaco to Jurong Town Corporation for arrears of rent;
(5) $30,425.70 due to Forward Overseas Credit Ltd being arrears of instalments (payable by Urban Buildmat Pte Ltd, another of his private companies);
(6) $3,108.90 to Teck Leong Hardware Pte Ltd by way of judgment debt (payable by Rimaco Pte Ltd);
(7) $2,903,832 to Deutsche Bank (by Rimaco Pte Ltd);
(8) $118,858 to Forward Oversea Credit (payable by Urban Buildmat Pte Ltd);
(9) CPF contributions to some employees for certain months in 1985 and 1986;
(10) $24,439.30 to the Comptroller of Income Tax being the balance payable for the Y/A 1985 assessment of $69,457.60 and also $29,595 for Y/A 1986.
(11) $6,426.37 due to Diners Club at 9 December 1987;
(12) $4,139.84 due to Carte Blanch at 3 December 1987;
(13) $16,805.75 due to American Express at 9 October 1987.

The petitioner has also produced evidence that (a) the three credit cards mentioned above have been cancelled; (b) that he had not been able to pay his tax arrears amounting to $51,629.13 in October 1987 and (c) that receivers and managers were appointed in respect of Rimaco on 16 October 1987. The petitioner has also produced evidence that his daughter had been extravagant in her use of his credit cards whilst studying in London from 1985 to 1987. This spending, which for the year of 1986 alone amounted to $50,888.85, was additional to the amount of £38,000 he had given her for the three years she was in London (1985 – £15,000; 1986 – £15,000 and 1987 – £8,000). There is also undisputed evidence that, on top of these sums, the petitioner in fact had paid $1,600 monthly maintenance from August 1982 to October 1985 amounting to $63,400, although his obligation was only to pay $1,500 per month. Altogether, there is irrefutable evidence that the petitioner had been over generous with his daughter.

As regards the respondent, the petitioner had paid from August 1982 to February 1987 for her personal maintenance and other expenses the total sum of $293,816.49, ie $5,246 pm under the terms of the agreement. He has defaulted in his payments from August 1985 up to July 1987 as a result of which the arrears due to the respondent was $89,391.61, in respect of which the respondent has taken out proceedings against him to recover the same. The respondent's case is that the petitioner has not produced sufficient evidence to show an adverse change in his financial circumstances. She disclosed that the petitioner owned (1) three Jaguar cars and one BMW car and (2) a large bungalow at No 11 Chestnut Crescent where his mistress and his son were living. The petitioner's reply to this was that he bought the Chestnut Crescent property to house his mistress and son in discharge of his moral obligations towards them and that the property was financed by a loan from Citibank and his CPF account, in respect of which he has to pay $3,960 (less $2,260 from CPF) pm. In respect of the cars, the petitioner says that two have been sold and the proceeds paid to Rimaco and that the other two, one of which was bought in 1984, have been remortgaged in 1985 to finance Rimaco and that it was necessary for him

to keep two cars to maintain his credibility in business circles. I should also add here that the petitioner is also supporting the second wife and another son (born in 1970) who is now studying in the Ngee Ann Polytechnic. The respondent and the daughter have made other allegations which implied that the petitioner has hidden assets somewhere, one such allegation being that the petitioner in 1986 had put the daughter up in a hotel in Mayfair, London at £200 per night. The petitioner's version is that his hotel expenses were paid for by an Indonesian company with which he had some business dealings in the past and that he only paid £90 for the daughter's room. He said he had to do it to maintain his business credibility with his business acquaintances.

In my view, the petitioner has produced more than sufficient evidence to show that there has been a material adverse change in his financial circumstances at the date of his petition. The purchase of No 11 Chestnut Crescent does not detract from this finding as it was purchased in July 1985. His principal private company, Rimaco, was put into receivership in October 1987, his credit cards have been cancelled and he has not been able to pay his income tax. On the other hand, the respondent is well-off. In addition to 60% of the lump sum of $150,000 received by her, she owns property at Grange Heights and Holland Road. She still drives a Mercedes Benz and has also retained $80,000 from the sale of a BMW which she had been using earlier. As for the daughter, the evidence is overwhelming that she has been totally extravagant in her style of living. In the premises, I am of the view that cl 2 of the agreement should be suspended with effect from June 1987 except for cl 2(d) which is to be varied by reducing the maintenance therein to $500 pm. There will be an order in terms. Each party will pay his or her own costs of this application. There shall be liberty to apply.

Order accordingly.

Solicitors: *KY Choy & Co; Lee & Lee.*

Reported by *Terence Tan Bian Chye*

Private Investment Company For Asia (PICA) SA v Lorrain Esme Osman

Elders Finance Asia Ltd v Lorrain Esme Osman

HIGH COURT (SINGAPORE) – SUIT NO 1212 OF 1983
CHUA J
10 APRIL 1989

Contract – Loan contract – Illegality – Whether moneylending transaction – Whether loan illegal as lenders not licensed – Whether lenders carrying on moneylending in Singapore – Whether lenders residing in Singapore

Negotiable Instruments – Promissory notes – Whether note given for an illegal loan

Words and Phrases – 'Belief' – 'Determination'

The defendant made a promissory note ('the note') in favour of PICA, the original plaintiffs. The note was made pursuant to an antecedent loan incurred by the defendant. The loan was given as a result of a one-month bridging finance on the request of the defendant pending finalization of his financing arrangements. Following the failure of the defendant to pay the principal and interest in accordance with the demand of the original plaintiffs, the present action was started. The defendant claimed that the original plaintiffs were engaged in the business of moneylending and thus required a licence under the Moneylenders Act. It was alleged that documents produced by the original plaintiffs, such as their annual report and their articles of incorporation and by-laws, showed that they announced and held themselves out as carrying on the business of moneylending. The original plaintiffs could have granted an offshore loan, but chose to do it through their Singapore subsidiary and Singapore law would apply.

Held, giving judgment for the original plaintiffs:

(1) The Moneylenders Act was intended to apply only to those persons who are really carrying on the business of moneylending as a business, not to persons who lend money as an incident of business or by way of friendship.

(2) Loan transactions which are undertaken genuinely for the purposes of preserving, advancing or otherwise assisting a party's business, though not necessarily undertaken in connection with its primary objects, were made for the purpose of that business within s 2 of the Moneylenders Act and was within the exception from the definition of 'moneylender'.

(3) In the present case, the original plaintiffs are a foreign company whose principal business, as can be seen from its articles of incorporation and by-laws, is that of making and facilitating capital investments in companies located in Asia and the Far East and to carry out this business the company has power to lend money. The lending of money was clearly not its primary business.

(4) The defendant was a participant in a joint venture project, and as he did not have sufficient funds, he requested the original plaintiffs for a temporary bridging loan. The facts therefore show that the original plaintiffs were not 'moneylenders' within the meaning of the Act.

(5) The original plaintiffs were a Panamanian company with a branch office in Singapore. The defendant is Malaysian.